IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.Appeal No.99-MA of 2006

Date of Decision: 31-10-2006

State of Punjab

.....Appellant

VERSUS

Satnam Singh son of Ujjagar Singh son of Achhar Singh, aged 32 years, Agriculturist, resident of Village Baltoha, Tehsil Patti, District Amritsar.

.....Respondent

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.JS Dhillon, Deputy Advocate General, Punjab.

Ms.Tanu Bedi, amicus curiae
for the respondent.

R S MADAN, J.

This Criminal Appeal under Section 378(3) of the Code of Criminal procedure is filed by the State of Punjab for grant of leave to appeal against the judgment of acquittal dated 20-9-2005 passed by the Judicial Magistrate Ist Class, Ludhiana in Criminal Case No.69/1 of 7-8-2000 under Sections 420/467/468/471 of the Indian Penal Code.

In brief, the case of the prosecution is that an application No.16807/A.C.-3 dated 2-10-1999 from Commandant, 5th IRB, Mal Mandi, Amritsar was received by the Senior Superintendent of Police, Ludhiana on

the ground that the accused by furnishing a forged certificate has sought the appointment of a Constable in IRB. After securing the opinion from the Department, a case bearing FIR No.242 dated 18-10-1999 under Sections 420/467/468/471 of the Indian Penal Code was registered at Police Station, Sarabha Nagar, Ludhiana. Satnam Singh-accused was recruited in the 2nd IRB, Ludhiana vide book order No.87/94 dated 27-5-1994 and at the time of his recruitment, he has furnished matriculation certificate in which his date of birth has been recorded as 1-4-1971. On verification from the Punjab School Education Board, Mohali, it was found that the date of birth of the accused was 1-4-1967. On learning the same, the accused absented himself from duty which led to his dismissal from service vide order dated 5-5-1998. The case was investigated by the Police. Challan against the accused was presented under Sections 420/467/468/471 of the Indian Penal Code in the Court of the Judicial Magistrate Ist Class, Ludhiana.

On appearance of the accused before the Court, a prima facie case for the offence under Sections 420/467/468/471 of the Indian Penal Code was made out against the accused and he was charge-sheeted thereunder. The aforesaid charges were read over and explained to the accused, to which he pleaded not guilty and claimed trial.

To prove its case, the prosecution relied upon the testimony of PW1-Nirmal Singh, PW2-Dharam Pal, PW3-Sanjeev Kumar, PW4-Teja Singh, PW5-Amar Chand, Retd. Inspector, PW6-Sanjeev Kalra, DIG, Traffic, Punjab, Chandigarh and PW7-GS Sahota, DIG, Vigilance Bureau, Chandigarh and closed the case of the prosecution.

After the case of the prosecution was closed, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to him, to which he denied and pleaded false implication.

The accused proffered to lead evidence in defence but later on led no evidence in defence.

After considering the entire evidence of the prosecution, the learned Magistrate did not find favour with the prosecution evidence and recorded the order of acquittal in favour of the accused.

Aggrieved by the impugned order of acquittal, the State has now sought the leave of this Court to file an appeal against the impugned order.

We have heard the learned counsel for the parties and have carefully gone through the record of the case.

Learned State counsel has stated that the respondent in the instant case has secured the appointment of a Constable in IRB by producing a forged matriculation certificate in which the date of birth was forged from 1-4-1967 to 1-4-1971 intending to use the same for the purpose of cheating, and actually using the same with this intention, he has produced a false certificate to secure the appointment in the Department. On receipt of letter No.3462 dated 11-4-1996, PW4-Teja Singh, Senior Assistant from the office of Middle Cell, Punjab School Education Board, Mohali testified that in May, 2000 he was posted as Senior Assistant in the Certificate Branch, Punjab School Education Board, Mohali. He had verified regarding the certificate of Satnam Singh, Serial No.055819 and on

enquiry he found that as per the record maintained in the Board, the actual date of birth of accused-Satnam Singh was 1-4-1967 whereas on the photostat copy of Certificate the date of birth has been found to be changed to 1-4-1971.

Thus keeping in view the aforesaid factor, the learned Magistrate has erred in acquitting the accused.

On the other hand, learned counsel for the respondent has submitted that the prosecution has miserably failed to bring home the guilt of the accused. In the instant case, the prosecution has relied upon a photostat copy of the certificate but failed to place on record the original forged certificate to substantiate its case against the respondent. The testimony of Teja Singh-PW4 is based on a letter written by the Department to the Punjab School Education Board, Mohali and in reply to the said letter, it has been found that the date of birth of respondent as per the record available in the Board is 1-4-1967 and not 1-4-1971 against Serial No.055819.

Learned counsel further submitted that when the primary evidence is available, the question of leading secondary evidence without the permission of the court is not permissible and the same cannot be taken into consideration. In such a situation, the accused could not be held guilty for committing the act of forgery and to secure employment on the basis of a forged certificate.

After considering the submissions of the learned counsel for the parties, we find force in the contention of the learned counsel for the respondent. The prosecution has failed to place on record the original certificate which the respondent has filed with the Authorities at the time of

securing the appointment of a Constable in IRB as well as failed to examine any expert witness or the official of Punjab School Education Board, Mohali to prove the act of forgery. The Forms which were submitted by the respondent at the time of his taking matriculation examination have also not been produced.

Thus, in the absence of any cogent and convincing evidence led by the prosecution, we do not find any infirmity in the order of acquittal recorded by the learned Judicial Magistrate Ist Class, Ludhiana. Resultantly, leave to appeal is declined.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

October 31, 2006
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